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IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-647

KAREN MARCHIORO, ET AL.,
Appellants,

v.

NEALE V. CHANEY, ET AL.,
Appellees.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF WASHINGTON

BRIEF OF APPELLEES

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BRIEF OF APPELLEES

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the First and Fourteenth Amendments to the United States Constitution and RCW 29.42.020.

The First and Fourteenth Amendments are set forth in the Brief of Appellants (hereinafter "Br.A."). RCW 29.42.020 states:

> *State Committee.* The state committee of each major political party shall consist of one committeeman and one committeewoman from each county elected by the county committee at its organization meeting. It shall have a chairman and vice-chairman who must be of opposite sexes. This committee shall meet during

January of each odd-numbered year for the purpose of organization at a time and place designated by a sufficient notice to all the newly elected state committeemen and committeewomen by the authorized officers of the retiring committee. For the purpose of this section a notice mailed at least one week prior to the date of the meeting shall constitute sufficient notice. At its organizational meeting it shall elect its chairman and vice-chairman, and such officers as its bylaws may provide, and adopt bylaws, rules and regulations. It shall have power to:

(1) Call conventions at such time and place and under such circumstances and for such purposes as the call to convention shall designate. The manner, number and procedure for selection of state convention delegates shall be subject to the committee's rules and regulations duly adopted;

(2) Provide for the election of delegates to national conventions;

(3) Fill vacancies on the ticket for any federal or state office to be voted on by the electors of more than one county;

(4) Provide for the nomination of presidential electors; and

(5) Perform all functions inherent in such an organization.

Notwithstanding any provision of this 1972 amendatory act, the committee shall not set rules which shall govern the conduct of the actual proceedings at a party state convention.

QUESTION PRESENTED

Is a state statute under which the membership of the Washington State Democratic Committee (hereinafter the "State Committee") is set at two members from each county unconstitutional?

STATEMENT OF THE CASE

A. Parties

Appellants consist of eight individuals. At the time this case came before the trial court, three of the appellants were chairmen of county central committees of the Democratic Party of Washington; two of the three presently hold those positions. Before the trial court, four other appellants claimed to be elected representatives to the State Committee from Washington Democratic legislative district organizations; only two presently retain these positions. Before the trial court, the eighth appellant was a member of the State Committee; she no longer holds that position. All appellants allege they are "members" of the Democratic Party of Washington.

Appellee Neale V. Chaney, was, at the time the suit was filed, chairman of the State Committee. Chaney left that position in August 1978, and is no longer associated with the State Committee. The other appellee is the State Committee itself, whose function is discussed below.

B. Democratic Party of Washington

The Democratic Party of Washington is classified by state statute as a "major political party." RCW 29.01.090.[1] As such, the party is subject to the provisions of RCW Ch. 29.42, Political Parties.

RCW 29.42.020-29.42.070 set out the structure to be met by major political parties. These statutes detail the organization, functions and requirements of the State Committee (.020), the county central committees (.030), pre-

1. "'Major political party' means a political party of which at least one nominee for president, vice-president, United States Senator, or a state-wide office received at least five percent (5%) of the total vote cast at the last preceding state general election in an even-numbered year . . ."

cinct committeemen (.040-.060), and legislative district chairmen (.070). The responsibilities of some of these groups and individuals have, however, been supplemented by the Charter of the Democratic Party of Washington (hereinafter "Charter"). See Article IV., Appendix (hereinafter "App."), 8-13.

As a major party under the statutes, the Democratic Party of Washington has certain powers:

> As an existing and acknowledged major political party it is, even absent statutory authorization, endowed with inherent powers of self-regulation toward the ends of establishing party policy, conducting conventions, endorsing candidates, managing campaigns, raising funds, enlisting members, electing organizational officers, and creating committees.

King County Republican Central Committee v. Republican State Committee, 79 Wn.2d 202, 210-211 (1971).

Furthermore, the Supreme Court of the State of Washington has stated in two different cases that:

> The state convention of a major political party is the ultimate respository of statewide party authority . . . . And, *subject to the intervention of applicable statutory or constitutional provisions*, the state convention is implicitly empowered to establish the permanent state organization of the party, create committees, delegate authority, and promulgate, adopt, ratify, amend, repeal or enforce intraparty statewide rules and regulations.

Ibid., 79 Wn.2d at 211-212. (Emphasis supplied). *See also, Marchioro v. Chaney*, 90 Wn.2d 298, 313 (1978).

Thus, the State of Washington has enacted a regulatory scheme with which major political parties, including the Democratic Party of Washington, must comply, and pursuant to which major political parties, including the Democratic Party of Washington, are to be structured.

C. The State Committee

The statutory organization, functions and duties of the State Committee are set forth in RCW 29.42.020. These were further delineated in the *King County Republican* case.

> Representative of a permanent state party organization, though subordinate to the overriding power of the party's state convention, is a state committee created by RCW 29.42.020. As a committee designed to function on a statewide level, it is necessarily invested with the inherent power to adopt rules and regulations for its own internal government, as well as to promulgate, subject to the overriding authority of the state convention, intraparty rules governing statewide operations of the party as a political organization during the interval between conventions.

79 Wn.2d at 212.

The functions of the State Committee were considered in *Dahl v. Republican State Committee*, 319 F. Supp. 682 (W.D. Wash. 1970), in which the State Committee was a named defendant.[2] The district court characterized the State Committee in the following terms:

> [T]he functions performed by the state and county committees are *primarily administrative in nature* and concern themselves almost exclusively with the internal affairs of the political parties.

319 F. Supp. at 685. (Emphasis supplied).

On pages 4-5 of their brief, appellants purport to describe the functions of the State Committee. This descrip-

2. In *Dahl*, RCW 29.42.020 was challenged on the grounds that it violated the Equal Protection clause of the Fourteenth Amendment. The district court rejected the contention, holding that there was no requirement under the Fourteenth Amendment that the State Committee be apportioned on the basis of population. 319 F. Supp. at 684, 685.

tion is taken, however, not from state law, but from the powers delegated to the State Committee by the Democratic Party of Washington, either specifically, as by the Charter or party rule, or by tradition. This is true, for instance, as to the raising and distribution of funds by the State Committee.[3] As another example, there is no indication in the record that the State Committee conducted workshops to instruct candidates on effective campaign procedures and organization until the Charter delegated that function. Charter, Art. VII(C)(1), App. 19.

In their description, appellants claim that the State Committee "exercises the Party's policy-making functions." Br. A., 4. What appellants mean by this is not clear, and their reference to the Charter, Art. IV(G)(1), App. 10, is of no assistance since there is no mention there of policy-making. To the extent, however, that policy-making includes the creation and determination of the position of the Democratic Party of Washington on political issues and public affairs, Washington law does not delegate that function to the State Committee, and there is nothing in the record showing that the State Committee has, in fact, engaged in this activity. *Furthermore, the State Committee denies that this "policy-making" is one of its functions under state law.*

According to appellants, the State Committee "directs the Party's administrative apparatus." Br.A., 4. Under state

3. While the State Committee has raised and distributed some money, the amounts have been small, and have gone to the administration of the State Committee, payment of debts, and distribution to Democratic Party candidates nominated to run for office. Record (hereinafter "R."), Supplemental Exhibit, 27.

law, this is the duty of the State Committee, subject to the overriding power of the state convention. 79 Wn.2d at 212.

RCW 29.42.020 is part of a continuous line of Washington statutes creating and regulating the state committees of major state political parties. The first, enacted in 1909, set the composition of the State Committee at one member from each county committee. Laws of 1909, Chap. 82, § 6, p. 175. In 1927, the membership was changed to one committeeman and one committeewoman from each county. Laws of 1927, Chap. 200, § 1, p. 287. Consequently, the statutory scheme attacked by the appellants is seventy years old.

D. Proceedings Below

In 1976, the Washington State Democratic Convention adopted the Charter. Art. IV(G)(4) of the Charter provides:

> The State Democratic Committee membership shall be organized according to state law; however, in addition to having two (2) delegates per county as voting members, each legislative district shall elect one (1) voting member. Each district representative shall be allowed to vote on all matters or issues, policies and goals which would reasonably fall within the function of the State Convention and as allowed by state law.

App. 11.

This change in the composition of the State Committee from that mandated by RCW 29.42.020 has not been implemented by the State Committee. In the first place, not all legislative district representatives have been elected, and it has been the constant position of the State Committee that no legislative district representatives shall be

seated until all have been elected. Aff. of Neale V. Chaney, ¶ 5, R., 69. Furthermore, the State Committee's position is that the seating of the legislative district representatives will be a violation of state statute, a situation the State Committee understandably wishes to avoid.[4]

Appellants filed this suit in the Superior Court of King County, Washington, requesting, *inter alia*, declaratory relief that RCW 29.42.020 was unconstitutional, that the State Committee must be operated in accordance with the Charter, and that those appellants who were validly elected legislative district representatives were to be seated before the State Committee could transact any business. The superior court held that RCW 29.42.020 unconstitutionally violated appellants' First Amendment freedom of association, but did not order the seating of the legislative district representatives. Order and Judgment, Appendix to Jurisdictional Statement (hereinafter J.S.App.), p. C-3. The Supreme Court of the State of Washington reversed the superior court's finding of unconstitutionality, on the grounds that appellants had failed to show that RCW 29.42.020 substantially burdened appellants' right of free association. 90 Wn.2d at 310-312, J.S.App., A-13-15. The court further found that the Charter was binding on the State Committee, except for Article IV(G)(4), which conflicted with RCW 29.42.020. 90 Wn.2d at 314, J.S.App., A-17.

4. Resistance to the seating of the legislative representatives is also mandated by the Charter. Art. VIII(A) provides as follows:

> This Charter is intended to conform to state and federal statutes and to applicable parts of the Charter of the Democratic Party of the United States. If parts of this Charter are found to be in conflict with such statutes or the National Charter, the applicable statute or provision of the National Charter shall govern.

App. 19.

Appellants have never presented this controversy to the National Democratic Party, or its national committee, in any fashion. However, this controversy has often been considered by the Washington state legislature, which has refused to enact the change for which appellants are pressing. These refusals have occurred even though from 1970 to 1978, with the exception of 1970-1972 when the Republican Party controlled the House of Representatives, the legislature has been controlled by the Democratic Party of Washington. The state legislature is, of course, apportioned on the basis of population.[5]

SUMMARY OF ARGUMENT

I.

Freedom of association is part of the freedoms of speech and assembly under the First Amendment. As such, it protects group activity involved in the advocacy and advancement of ideas and beliefs.

Because RCW 29.42.020, which sets the size and composition of the State Committee, does not substantially burden the Democratic Party of Washington in the advocacy and advancement of its beliefs and ideas, it does not substantially burden appellants' rights under the First Amendment.

5. Relevant bills include H.B. 152, 45th Leg. (1977) (added legislative district representatives and deleted sexual classifications); H.B. 598, 45th Leg. (1977) (removed provisions defining composition and gender of committee); H.B. 850, 45th Leg. (1977) (removed gender provisions and allowed parties to add legislative district representatives); S.B. 2481, 45th Leg. (1977) (similar to H.B. 152, *supra*); H.B. 545, 44th Leg. (1975) (similar to H.B. 152, *supra*); H.B. 747, 43rd Leg. (1973) (added legislative district representatives); and H.B. 507, 42nd Leg. (1971) (substituted legislative district representatives for county representatives). None of these bills left committee.

II.

RCW 29.42.020 is reasonably related to the State of Washington's interests in the operation of its electoral system, and its interest in the integrity and stability of its electoral process, and thus is not unconstitutional.

Assuming *arguendo* that RCW 29.42.020 substantially burdens appellants' First Amendment rights, the statute serves the State of Washington's compelling state interests in an orderly and stable electoral process and political system, in the integrity, stability and responsibility of major political parties, and in having state committees behind and as part of political parties.

Because the membership of the State Committee coincides with the governmental structure responsible for the administration of the state electoral process, the statute is drawn sufficiently narrowly to accomplish its purpose without unnecessarily infringing on protected First Amendment rights.

ARGUMENT

I. RCW 29.42.020, Which Sets the Size and Membership of the State Committee, Does Not Substantially Burden the Appellants' First Amendment Rights

Appellants claim that a state statute which sets the size and membership of the State Committee substantially burdens their right to have implemented the decision of the Democratic Party of Washington as to the size and composition of its State Committee, and the right of individual party members to be seated on the State Committee. Because no such rights exist under the First Amendment freedom of association, appellants show no substantial burdens on protected First Amendment rights.

A. *Appellants Have No Right Under the Freedom of Association to Determine the Size and Composition of The State Committee of the Democratic Party of Washington*

In their attempts to bring this case within the First Amendment, appellants claim a right to determine the size and composition of the State Committee (Br.A., 11).

This Court has considered the freedom of association several times. Other courts have also considered this First Amendment freedom. Appellants' contention finds virtually no support in these cases.

The freedom of association upon which appellants base their suit has its roots in *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449 (1958), and *Bates v. Little Rock*, 361 U.S. 516 (1960). In the former case, this Court reversed a state court judgment of civil contempt against the NAACP for failure to produce its membership list during discovery. Discussing the freedom of association, this Court said:

> *Effective advocacy of both public and private points of view*, particularly controversial ones, is undeniably enhanced by group association, as this Court has more than once recognized by remarking upon the close nexus between the freedoms of speech and assembly. [Citations omitted]. It is beyond debate that freedom to engage in *association for the advancement of beliefs and ideas* is an inseparable aspect of the "liberty" assured by the Due Process Clause of the Fourteenth Amendment, which embraces freedom of speech. [Citations omitted].
>
> . . . .
>
> It is hardly a novel perception that compelled disclosure of *affiliation with groups engaged in advocacy* may constitute as effective a restraint on freedom of association as the forms of governmental action in the

> cases above were thought likely to produce upon the particular constitutional rights there involved.

357 U.S. at 460, 462. (Emphasis supplied). This Court held that, in the circumstances of the case, disclosure of the membership list of the NAACP constituted a substantial burden on its constitutional rights with no countervailing compelling state interest.

In *Bates*, a city licensing ordinance provision required disclosure of the NAACP's membership lists. This Court struck down that provision also, stating:

> [F]reedom of association *for the purpose of advancing ideas and airing grievances* is protected by the Due Process Clause of the Fourteenth Amendment from invasion by the States.

361 U.S. at 523. (Emphasis supplied).

Thus, both *NAACP v. Alabama* and *Bates* dealt with the question of compelled disclosure of membership in a group, and "the vital relationship between freedom to associate and privacy in one's associations." *NAACP v. Alabama*, 357 U.S. at 462. *Bates*, 361 U.S. at 523. These cases thus dealt with state interference with the freedom of individuals to form groups to exercise their First Amendment freedoms of speech and petition. There were no issues relating to the structure or membership of internal bodies within these groups, or state regulation of these internal bodies. These cases did, however, establish the purpose and goals of the freedom of association, *to-wit*, "effective advocacy of both public and private points of view," "advancement of beliefs and ideas," (*NAACP v. Alabama*, 357 U.S. at 460), and "airing grievances," (*Bates*, 361 U.S. at 523). *See also Brotherhood of Railroad Trainmen*

v. Virginia State Bar, 377 U.S. 1, 5 (1964) ("to gather together for the lawful purpose of helping and advising one another in asserting the rights Congress gave them . . .").

In *Kusper v. Pontikes*, 414 U.S. 51 (1973), this Court elaborated upon the freedom of association, finding unconstitutional an Illinois statute prohibiting an individual's voting in a political party's primary election where that individual had voted in the primary election of another party within the preceding twenty-three (23) months. This Court held that the right to associate with the political party of one's choice was an integral part of the constitutionally protected freedom of association, 414 U.S. at 57, and that infringement of the right to select the party's candidate for public office in primary elections substantially infringed this freedom.

> Under our political system, *a basic function of a political party is to select the candidates for public office to be offered to the voters at general elections.* A prime objective of most voters in associating themselves with a particular party must surely be to gain a voice in that selection process. By preventing the appellee from participating *at all* in Democratic primary elections during the statutory period, the Illinois statute deprived her of any voice in choosing the party's candidates, and thus substantially abridged her ability to associate effectively with the party of her choice.

414 U.S. at 58. (Emphasis supplied).

Thus, the issues in *Kusper* involved the access of the plaintiff to the candidate selection process of her chosen political party, unquestionably one of the most important aspects of group political activity undertaken for the advancement of the group's beliefs and ideas. In the present

case, however, appellants assert no complaint relating to the selection of candidates by the Democratic Party of Washington, nor do they complain of their voice in the selection process involved. On the other hand, *Kusper* involved no issues relating to the internal organization of a political party, and created no rights with respect thereto.

Appellants rely substantially on *Cousins v. Wigoda*, 419 U.S. 477 (1975), but that reliance is misplaced. In *Cousins*, delegates elected to the National Democratic Convention pursuant to Illinois statute were not seated by the convention; instead a second slate of delegates, not selected pursuant to statute, was seated by the convention and later allowed to choose the Illinois representatives to the Democratic National Committee. The Illinois state court held that the second slate of delegates had violated a constitutional Illinois court injunction preventing the group from carrying out the functions of delegates. This Court reversed the Illinois court for reasons that are discussed *infra*, pp. 27-28.

According to appellants, *Cousins* stands for the proposition that "the right of political parties to determine the composition of their internal party organs is protected by the First Amendment." (Br.A., 11). Actually, however, the right at stake in the case was much different.

> The right of members of a political party to gather in a national *political convention in order to formulate proposed programs and nominate candidates for political office* is at the very heart of the freedom of assembly and association which has been estabished in earlier cases decided by the Court. [Citations omitted].

419 U.S. at 491. (Rhenquist, J., concurring opinion).

Thus, in *Cousins*, as in all the other cases dealing with the freedom of association, the freedom of association was applied to protect the right of groups to advocate and advance their ideas and beliefs, and the right of individuals to participate in these groups. In the political arena, this includes the right of individuals to be part of the selection of candidates and the formulation of party policy.

On the other hand, where a private organization is not engaging in these activities, it is common for government to regulate the internal structure and membership of these organizations without violating the freedom of association. For instance, RCW 23A.08.340 - 23A.08.410 regulates the composition of the boards of directors of corporations, setting minimum limits on the number of directors required (.350) and a minimum number of directors required before classification is allowed (.360). Moreover, federal statute places restrictions on who is eligible to occupy executive, governing, employee, or other positions in labor organizations. 29 U.S.C. § 504.[6] Also, 12 U.S.C. § 78 restricts those people who may become officers, directors or employees of federal banks.

In *Runyon v. McCrary*, 427 U.S. 160 (1976), Negro children sued a private school which denied admissions to Negroes, alleging violation of 42 U.S.C. § 1981. The

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6. In *United States v. Brown*, 381 U.S. 437 (1965), this Court, in a 5-4 decision, held that the part of the law making it a crime for a member of the Communist Party to hold a position in a labor union was an unconstitutional bill of attainder. 381 U.S. at 449. However, the Court said:

> Congress undoubtedly possesses power under the Commerce Clause to enact legislation designed to keep from positions affecting interstate commerce persons who may use such positions to bring about political strikes.

381 U.S. at 449-450.

school defended on the grounds that the statute denied freedom of association to the children who attended the school and their parents. This Court rejected the argument that the freedom of association allowed the school to determine who could attend it.

> In *NAACP v. Alabama,* and similar decisions, the Court has recognized a First Amendment right "to engage in association for the advancement of beliefs and ideas. . . ." That right is protected because it promotes and may well be essential to the "[e]ffective advocacy of both public and private points of view, particularly controversial ones" that the First Amendment is designed to foster.
>
> From this principle it may be assumed that parents have a First Amendment right to send their children to educational institutions that promote the belief that racial segregation is desirable, and that the children have an equal right to attend such institutions. ***But it does not follow that the practice of excluding racial minorities from such institutions is also protected by the same principle.*** . . . In any event, as the Court of Appeals noted, "there is ***no showing that discontinuance of [the] discriminatory admission practices would inhibit in any way the teaching in these schools of any ideas or dogma.***"

427 U.S. at 175-176. [Citations omitted]. (Emphasis supplied).

To support their view of the rights granted under the First Amendment, appellants rely heavily on two lower court cases, *Ripon Society v. National Republican Party,* 525 F.2d 567 (D.C. 1975), *cert. denied,* 424 U.S. 933 (1976), and *Fahey v. Darigan,* 405 F. Supp. 1386 (D. R.I. 1975). In *Ripon Society,* plaintiffs attacked the allocation formula for delegates to the 1976 National Republican Convention, arguing that the Party was bound by the one-

man, one-vote rule. The court of appeals refused to decide whether the case involved state action, 525 F.2d at 576, or whether the issue was justiciable, 525 F.2d at 578, and instead went to the application of the Equal Protection Clause. The court concluded that, assuming the clause applied, it did not require the National Convention to adhere to the one-man, one-vote apportionment, but could be satisfied if the representational scheme "rationally advance some legitimate interest of the party in winning elections or otherwise achieving its political goals." 525 F.2d at 586-587. The court then approved the delegate selection process chosen by the party.

Thus, on its facts, the case does not apply to the present case. *Ripon Society* involved application of the Equal Protection Clause, not freedom of association. Further, *Ripon Society* involved a national convention, whose functions were the same as the convention in *Cousins.*

Appellants rely upon some broad dictum by the Court of Appeals in *Ripon Society.* The language, however, was overly broad and went far beyond the issues the court had before it. The unnecessary breadth of the *Ripon Society* opinion has been recognized by other courts. *Montano v. Lefkowitz,* 575 F.2d 378, 384 (2d Cir. 1978).

In *Fahey v. Darigan,* the district court considered a Rhode Island statute requiring ward committees in the city of Providence to be made up of nineteen members. The statute, like Art. IV(G)(4) in the present case, altered the long-time practice of the Democratic Party, which was to have eleven-member ward committees. The district court held that the statute violated the freedom of association of the plaintiffs, registered Democratic voters.

The court in *Fahey v. Darigan*, however, made a fundamental error in arriving at its conclusion. It failed to make the distinction between those activities protected by the freedom of association, that is, the advocacy of ideas and beliefs and the selection of candidates, and other functions and activities of private organizations.[7] Under the cases of this Court, the former activities are protected, the latter are not, and *Fahey v. Darigan* must be rejected.

In summary, the protection of the freedom of association does not extend as far as appellants claim. It is part of the other First Amendment rights, and aimed at the advocacy and advancement of ideas. *NAACP v. Alabama*, 357 U.S. at 460. *Bates*, 361 U.S. at 523. *Kusper*, 441 U.S. at 56-57. *Cousins*, 419 U.S. at 487. *Buckley v. Valeo*, 424 U.S. 1, 15, 22, 65 (1976). It protects the Democratic Party of Washington's rights to accept those who wish to join, to formulate and advocate its policies, to choose its candidates, and to attempt to implement its beliefs as the law of the land. To extend the freedom of association beyond these activities would be inconsistent with the previous decisions of this Court and others, would carry freedom of association beyond the activities protected by the First Amendment, and would work a major change on the relationship between government and private organizations in this country.

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7. The district court's erroneous holding that the statute burdened plaintiffs' freedom of association resulted from reliance upon (a) the dictum of *Ripon Society*, 405 F. Supp. at 1398, discussed *supra*, and (b) a quote from this Court's decision in *Storer v. Brown*, 415 U.S. 724, 729-30 (1974), 405 F. Supp. at 1394-1395. In *Storer*, this Court dealt with California restrictions on ballot position and ballot access, not internal party organization. Moreover, the quote itself actually affirms the states' interests in their electoral processes, and says nothing about the freedom of association protecting internal party organization.

B. *Appellants Have Not Shown That RCW 29.42.020 Substantially Burdens Their Right to Undertake or Participate in Group Activity For the Advocacy and Advancement of Ideas Which is Protected by the Freedom of Association*

In this case, the burden is upon the appellants to demonstrate an actual substantial restraint of their First Amendment associational rights. *American Party of Texas v. White*, 415 U.S. 767, 790 (1974). The Supreme Court of Washington in this case found that the appellants had proven no substantial restraint. 90 Wn.2d at 310-312, J. S. App. A-13-15. The Supreme Court of Washington was correct, and must be affirmed.

The first claim of substantial burden made by appellants is that RCW 29.42.020 burdens their "right to determine the composition of their internal party organs." (Br.A., 11, 16). As the cases discussed above show, private organizations do not enjoy a blanket right under the First Amendment to determine the size and composition of their internal governing bodies. *Runyon*, 427 U.S. at 175-176; *Brown*, 381 U.S. at 449. Thus, on this basis alone, appellants' argument that their rights have been substantially burdened must be rejected, since they have not demonstrated that such rights exist.

A second claim of substantial burden is that the statute burdens appellants' "right to administer those groups in the way that the membership determines would best further their ideals and goals." (Br.A., 12). As discussed above, *supra* at p. 16, *Runyon* made short shrift of this contention, absolutely rejecting it. There being no such right, there is no issue as to burden.

Appellants' third allegation of substantial burden is that RCW 29.42.020 burdens "the Democratic Party's right to decide for itself how it shall be governed." (Br.A., 17). Again, appellees reject the notion that such a right exists, for the reasons already discussed.

RCW 29.42.020 does not burden any of the rights of the Democratic Party of Washington which are protected by the First Amendment. The statute delegates certain functions and responsibilities to the State Committee: To call state conventions, provide for election of national convention delegates, fill vacancies on federal or state tickets (a responsibility not involved in this case), (Br.A., 5, n. 11), and provide for the nomination of presidential electors. Appellants do not argue that the performance of any of these functions by the State Committee infringes upon their First Amendment freedom of association.

As the statute is interpreted by *King County Republican*, the State Committee also is to govern the operations of the party in the interval between the conventions, "subject to the overriding authority of the state convention." 79 Wn.2d at 212. As such, however, the State Committee is bound to follow the policies laid down by the state convention.

State law does not delegate to the State Committee the party's right to decide "what actions to take and how best to present its position," "what will be said and who will say it to the best effect," "which candidates to support by endorsement and which to ignore," "which candidates should receive funds raised by the party and which should not," "what forms of persuasion will make and keep new converts and what encouragement will strengthen the re-

solve of old stalwarts." (Br.A., 13). To the extent any such decisions are made, such decisions are made pursuant to the policies and subject to the authority of the state convention (which meets once every two years. Charter, V(F)(1), App. 14).[8]

There is no evidence in this case that any of the appellants have been prevented from joining the Democratic Party of Washington.[9] Appellants do not claim that their right to participate in the candidate selection process is burdened by the statute. There is no evidence that the policy-making activities of the Party, which are assigned in the first instance to the state convention, have in any way been burdened by RCW 29.42.020, nor is there any proof that the statute has burdened the party in its advocacy of its policies.

Such was the decision of the Supreme Court of the State of Washington in this case, 90 Wn.2d 298, 310-311, J. S. App. A-13-15, which should be affirmed by this Court. This Court should reject the argument that where state law requires an organization (the State Committee) to perform certain functions, and additional functions are

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8. There is also a provision for annual party conferences. Charter, VII(B), App. 18-19.

9. Appellants claim that they are "members" of the Democratic Party of Washington. This claim confers no special status upon the appellants apart from their positions as officers in various Democratic Party organizations, since the Democratic Party of Washington itself has no formal procedure by which individuals become members. *See*, Charter, Art. III, App. 7-8. Moreover, there are no statutory methods for becoming "members." RCW 29.18.200 declares:

> Blanket Primary Authorized. All properly registered voters may vote for their choice at any primary election, for any candidate for each office, regardless of political affiliation and without a declaration of political faith or adherence on the part of the voter.

Thus, there are no card-carrying Democrats. Br.A., 12.

voluntarily delegated to that organization, the voluntary delegation makes the body unconstitutional.

Consequently, this Court must reject the appellants' contention that their First Amendment freedom of association rights have been substantially burdened. They have no constitutional right to determine the size and composition of the State Committee, and RCW 29.42.020 does not substantially burden the rights of appellants or the parties which are protected by the freedom of association.

C. *RCW 29.42.020 Does Not Substantially Burden Any Rights of the Legislative District Representatives to Participate in the Decisions of the State Committee*

It is appellees' contention that because RCW 29.42.020 does not provide for membership on the State Committee by legislative district representatives, and because this statute does not substantially burden any freedom of association rights of the Democratic Party of Washington or the appellants as "members" thereof, that the legislative district representatives have no constitutional right to be seated on the State Committee. Should this Court decide that the statute is unconstitutional, and that Art. IV(G)(4) controls the composition of the State Committee, appellees concede that validly elected legislative district representatives would be entitled to be seated on the State Committee.[10]

Appellees reject any contention that appellants, solely by virtue of their claimed status as "members" of the Democratic Party of Washington, have any constitutional right to be seated as members of the State Committee.

10. Appellees contend that no legislative district representatives should be seated until all have been chosen (see *supra* at pp. 7-8). The superior court did not rule on this contention (R. 4).

II. Assuming Arguendo That RCW 29.42.020 Substantially Burdens Appellants' First Amendment Rights, The Statute Serves a Compelling State Interest

Because appellants have failed to show that RCW 29.42.020 substantially burdens any of their First Amendment rights, appellees need only show that the statute is reasonably related to a legitimate state interest. In this case, the statute is reasonably related to the state interest in operating its electoral system, and maintaining the integrity and stability of its electoral process, areas in which states are given broad discretion.

Assuming, *arguendo*, that this Court finds that RCW 29.42.020 substantially burdens appellants' freedom of association, RCW 29.42.020 also serves compelling state interests of the State of Washington, *to-wit:* its interest in an orderly state electoral process, its interest in the integrity, stability, and responsibility of the political system, and its interest in having a State Committee. Furthermore, the statute is precisely drawn to protect these interests.

A. *RCW 29.42.020 is Reasonably Related to Legitimate State Interests*

Because appellants have failed to show that RCW 29.42.020 substantially burdens their First Amendment rights, appellees need not prove a compelling state interest which is served by the statute.

Furthermore, there is no question that the statute is reasonably related to a legitimate state interest. One such interest which the statute serves is the state interest in the efficient and orderly operation of its electoral system.

> Moreover, as a practical matter, there must be a substantial regulation of elections if they are to be fair

> and honest and if some sort of order, rather than chaos, is to accompany the democratic processes.
>
> . . . .
>
> It is very unlikely that all or even a large portion of the state election laws would fail to pass muster under our cases . . . .

Storer v. Brown, 415 U.S. at 730. *See also Kusper v. Pontikes, supra*, 414 U.S. at 57. In *Nader v. Schaffer*, 417 F. Supp. 837 (D. Conn.), *affirmed*, 429 U.S. 989 (1976), plaintiffs challenged Connecticut's party primary system. The district court rejected the challenge, and said:

> In addition to protecting the associational rights of party members, a state has a more general, but equally legitimate, interest in protecting the overall integrity of the historic electoral process. This includes preserving parties as viable and identifiable interest groups . . . .

417 F. Supp. at 845.

Moreover, RCW 29.42.020 serves the state interest in "maintaining the integrity and stability of existing political parties, thus encouraging responsible action on their part." *Tansley v. Grasso*, 315 F. Supp. 513, 517 (D. Conn. 1970) (three-judge court). Additionally, states are given broad discretion in this area. *Tansley, supra*, at 519.

Because RCW 29.42.020 is reasonably related to the above legitimate state interests, it is not unconstitutional.

B. *RCW 29.42.020 Serves Compelling State Interests of the State of Washington*

Assuming, *arguendo*, that this Court determines that RCW 29.42.020 constitutes a substantial burden on appellants' First Amendment Rights, there can be no doubt

that the statute serves compelling state interests, and must be upheld.

There is no doubt that states have a compelling interest in an orderly and stable electoral process and political system. *Storer v. Brown*, 415 U.S. at 730, discussed *supra* at pp. 23-24. In *Raza Unida Party v. Bullock*, 349 F. Supp. 1272 (W.D. Tex. 1972), *affirmed in part, vacated in part*, 415 U.S. 767 (1974), a three-judge court held that the Texas Election Code served a compelling state interest. 349 F. Supp. at 1276. In *Affeldt v. Whitcomb*, 319 F. Supp. 69 (N.D. Ind. 1970), *affirmed*, 405 U.S. 1034 (1972) (three-judge court), these interests were again termed "compelling." 319 F. Supp. at 76.

A second compelling state interest served by RCW 29.42.020 is the state's interest in the integrity, stability, and responsibility of major political parties. *Tansley*, 315 F. Supp. at 517.

> [T]he State is particularly concerned with the parties which have demonstrated some probability of success in the general election and whose candidates may become holders of public office.

Nader, supra, 417 F. Supp. at 843.

A third compelling state interest served by the statute is the State of Washington's interest in having a state committee for political parties. In *King v. Willis*, 333 F. Supp. 670 (D. Del. 1971), plaintiff sued to have his name placed on the Delaware ballot as a candidate for President of the United States of the Vote for Jesus Party. In the case, plaintiff argued that the state requirement that all parties have a state committee was an unreasonable burden on his First Amendment rights. The court rejected the challenge.

> Finally, § 101 requires an organization, in order to qualify as a political party, to elect a State Committee at its Convention. . . . This requirement, in our view, is not unreasonable because there is a vital state interest to be served. . . . It is to promote this crucial interest in making available to the electorate some source of information of the party organization supporting such candidates that Delaware insists that they be backed by some minimal and visible State Committee organization.

333 F. Supp. at 674-675.

In the State of Washington, under RCW 29.42.020, the State Committee serves as the statewide administrator of party affairs between conventions. Rather than being a policy-making organization, the State Committee maintains party operations and initiates the Democratic Party's involvement in the electoral process by calling state conventions and providing for the election of national convention delegates and presidential electors. (RCW 29.42.020 (1),(2),(4)). In doing this, the State Committee is the glue which holds the party together between elections, and in this way contributes to the operation, stability and orderliness of the process the State of Washington has devised to conduct its electoral process. Consequently, RCW 29.42.020 serves a compelling state interest of the State of Washington.[11]

11. A further indication that statutes creating state committees serve critical state interests is that the following states have, as part of their regulation of the electoral process, also legislated as to the composition of political party state committees: Arizona (Arizona Rev. Stat., § 16-233); Arkansas (Ark. Stat., 1947, § 3.102); California (Election Code, §§ 8660-8675); Colorado (Col. Rev. Stat., § 1-14-108(2)); Idaho (Idaho Code, § 34-504); Illinois (Ill. Rev. Stat., § 46-7-8(a)); Indiana (Indiana Code 3-1-2-1); Iowa (Iowa Code, § 43.111); Kansas (Kan. Stat. Anno., § 25-3804); Louisiana (La. Rev. Stat., § 18:285(1)(a)); Maryland (Michie's Code, Article 33, § 11-2(a)(1), *et seq.*); Massachusetts (Mass. Gen. Laws, Ch. 52, § 1); Michigan (Mich. Stat. Anno., § 6.1597); Mississippi (Miss. Code, § 23-2-3(a)); Missouri (Mo. Rev. Stat., § 115.623); Montana (Montana Rev. Code, § 23-34-3(b)); Nevada (Nev. Rev. Stat., § 293.153); New Hampshire (N.H. Rev. Stat. Anno., Ch. 56, § 63); New Jersey (Rev. Stat., Title 19, Ch. 5, § 4); New York (McKinney's Con. Laws of New York Anno., § 2-102(1)); North Dakota (N.D. Century Code Anno., § 16-17-11); Ohio (Baldwin & Page's Ohio Rev. Code, § 3517.03); Oregon (Or. Rev. Stat., § 248.-075(1)); South Carolina (Code of Laws of S. Carolina, § 7-9-90); South Dakota (S.D. Cod. Laws, § 12-5-16); Tennessee (Official Tenn. Code Anno., § 2-1304); Vermont (Vt. Stat. Anno., § 17-730); West Virginia (Michie's Code, Ch. 3, Article 1, § 9); Wyoming (Wy. Stat., § 22-4-110).

In *Fahey v. Darigan,* 405 F. Supp. 1386 (D. R.I. 1975), discussed *supra* at pp. 17-18, the court held that no compelling state interest supported a state statute regulating the composition of political party ward committees. 405 F. Supp. at 1398. In arriving at its conclusion, the district court totally ignored the interests the states have in protecting and maintaining a stable political system, and this Court's decision in *Cousins v. Wigoda,* 419 U.S. 477 (1975), discussed, *supra,* at pp. 14-15.

In *Cousins,* the issue was:

> whether the Appellate Court was correct in according primacy to state law over the National Political Party's rules in the determination of the qualifications and eligibility of delegates to the Party's National Convention.

419 U.S. at 483.

This Court held that the national interest outweighed the state interest.

> But respondents overlook the significant fact that the suffrage was exercised at the primary election to elect delegates to *a National Party Convention.* Consideration of the special function of delegates to such a Convention militates persuasively against the conclusion that the asserted interest constitutes a compelling state interest. *Delegates perform a task of supreme*

> *importance to every citizen of the Nation regardless of their State of residence.* The vital business of the Convention is the nomination of the Party's candidates for the offices of President and Vice-President of the United States. . . . If the qualifications and eligibility of delegates to National Political Party Conventions were left to state law "each of the 50 states could establish the qualifications of its delegates to the various party conventions without regard to party policy, an obviously intolerable result." *Wigoda v. Cousins,* 342 F. Supp. 82, 86 (N.D. Ill. 1972). Such a regime could seriously undercut or indeed destroy the effectiveness of the National Party Convention as a concerted enterprise engaged in the vital process of choosing Presidential and Vice-Presidential candidates—a process which usually involves coalition cutting across state lines. *The Convention serves the pervasive national interest* in the selection of candidates for national office, and *this national interest* is greater than any interest of any individual State.

419 U.S. at 489-490. (Emphasis supplied).

In an opinion concurring in part and dissenting in part, Mr. Justice Powell said:

> I also agree with the Court that this case intimates no views regarding other efforts to regulate party conventions. Congressional regulation of state conventions or state regulation of state primaries or conventions for state offices raises different considerations requiring a wholly different balance.

419 U.S. at 497, n. *.

The district court in *Fahey v. Darigan,* rejected this Court's indications that compelling state interests were involved in the regulation of state political activity (including state conventions). Consequently, *Fahey v. Darigan* is incorrect.

C. *RCW 29.42.020 is Sufficiently Narrowly Drawn So As Not to Unnecessarily Restrict Appellants' Rights Under the First Amendment*

Again assuming, *arguendo,* that RCW 29.42.020 constitutes a substantial burden upon appellants' First Amendment rights, the statute is drawn sufficiently narrowly so as not to unnecessarily infringe upon these rights.

First, membership on the State Committee is, and has been since 1909, on a county-by-county basis. As such, the structure of the State Committee is coincident with the structure chosen by the State of Washington to carry out its electoral processes. Under RCW 29.04.020, the County Auditor of each county is the supervisor of virtually all primaries and elections, general or special.

Thus, if the State Committee has concerns or problems relating to the state electoral process, these problems can be handled by members having the same constituency as the government officials being dealt with. For the same reason, State Committee members can more effectively carry out in their respective counties, either with government officials or with county central committees established under RCW 29.42.030, their duties and responsibilities.

Additionally, because of the administrative and executive nature of the State Committee, limiting the membership to two per county (one man and one woman), avoids the natural and inherent problems present when large committees attempt to carry out such functions.

Thus, the statute establishing the size and composition of the State Committee serves a compelling state interest, and is narrowly drawn to achieve those interests.

CONCLUSION

The judgment of the Supreme Court of the State of Washington holding that RCW 29.42.020, as applied to the Democratic Party of Washington, is constitutional and should be affirmed.

Respectfully submitted,

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